

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	File Number EB-04-OR-103
Delta Radio Greenville, LLC)	
Licensee of WROX(AM))	NAL/Acct. No.200432620005
Clarksdale, Mississippi)	
)	FRN 0007689243
)	

MEMORANDUM OPINION AND ORDER

Adopted: September 17, 2007

Released: September 18, 2007

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order (“Order”), we deny the petition for reconsideration filed by Delta Radio Greenville, LLC (“Delta”), licensee of radio station WROX(AM), Clarksdale, Mississippi, of the *Forfeiture Order* issued October 1, 2004.¹ The *Forfeiture Order* imposed a monetary forfeiture in the amount of \$12,000 on Delta for the willful and repeated violation of Sections 11.35(a) and 73.49 of the Commission’s Rules (“Rules”).² The noted violations involved Delta’s failure to maintain operational Emergency Alert System (“EAS”) equipment and its failure to enclose an antenna tower with radio frequency potential at the base within an effective locked fence.

II. BACKGROUND

2. On May 12, 2004, an agent of the Commission’s New Orleans Field Office of the Enforcement Bureau (“New Orleans Office”) observed the antenna structure of WROX(AM) and discovered that one side of the fence enclosing the antenna structure was lying on the ground. The agent easily walked over the downed section of fence to the base of the antenna structure, which had radio frequency potential at its base.

3. On May 13, 2004, the agent inspected WROX(AM) and found that there was no EAS equipment present. In addition, there was no evidence that the equipment had been removed from service for repair.³ The General Manager of the station admitted that no EAS equipment had been present at WROX(AM) since his arrival at the station in October 2003. When shown that one side of the fence enclosing WROX(AM)’s antenna structure was lying on the ground, he stated the fence had been this way for the same period of time.

¹ *Delta Radio Greenville, LLC*, Forfeiture Order, 19 FCC Rcd 19461 (Enf. Bur. 2004) (“*Forfeiture Order*”).

² 47 C.F.R. §§ 11.35(a), 73.49.

³ See 47 C.F.R. § 11.35(b).

8. We disagree. “The Commission has long held that licensees and other Commission regulatees are responsible for the acts and omissions of their employees and independent contractors and has consistently refused to excuse licensees from forfeiture penalties where actions of employees or independent contractors have resulted in violations,”¹¹ precisely because licensees may not oversee the day-to-day operations of their stations. To hold otherwise, would allow licensees to avoid compliance with the rules simply by not paying attention to their stations. Thus, although Delta’s employees and general manager may have failed to inform the owner of these violations, the Commission holds licensees responsible for the acts and omissions of their employees. Accordingly, we affirm our conclusion that Delta’s violations were willful and repeated.

9. Moreover, regarding its fencing violation, in response to the *NAL*, Delta’s owner stated the fence must have been damaged by vandals, as the transmitter had been vandalized several times since 1998. If Delta’s owner knew that the transmitter site had a history of being vandalized, he should have had the transmitter site inspected regularly, but failed to do so. Lastly, prompt corrective action taken to come into compliance with the Rules, such as Delta’s owner’s repair of the fence and purchase of EAS equipment, is expected, and does not nullify or mitigate any prior forfeitures or violations.¹²

10. Finally, Delta asserts a forfeiture of this magnitude would pose a significant financial hardship. The Commission has determined that, in general, an entity’s gross revenues are the best indicator of its ability to pay a forfeiture.¹³ After reviewing Delta’s tax returns and total income, we conclude that a reduction of the \$12,000 forfeiture is not warranted.

11. Therefore, we find no basis upon which to cancel or reduce the forfeiture imposed in the *Forfeiture Order*.

IV. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Communications Act of 1934, as amended,¹⁴ and Section 1.106 of the Commission’s Rules,¹⁵ Delta Radio Greenville, LLC’s petition for reconsideration of the October 1, 2004 *Forfeiture Order* **IS** hereby **DENIED**.

13. **IT IS ALSO ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹⁶ Delta Radio Greenville, LLC **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of twelve thousand dollars (\$12,000) for violations of Sections 11.35 and 73.49 of the Rules.

¹¹ *Eure Family Limited Partnership*, 17 FCC Rcd 21861, 21863-64 (2002) and cases cited therein.

¹² *See Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994).

¹³ *See PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator’s gross revenues); *Local Long Distance, Inc.*, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator’s gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator’s gross revenues).

¹⁴ 47 U.S.C. § 405.

¹⁵ 47 C.F.R. § 1.106.

¹⁶ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 11.35, 73.49.

14. Payment of the \$12,000 forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁷ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the “Federal Communications Commission.” The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director, Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.¹⁸

15. **IT IS FURTHER ORDERED** that this Order shall be sent by regular mail and by certified mail, return receipt requested, to Delta Radio Greenville, LLC at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Enforcement Bureau

¹⁷ 47 U.S.C. § 504(a).

¹⁸ See 47 C.F.R. § 1.1914.